IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

WP(C).No. 22994 of 2006(K)

OS.448/2004 of PRINCIPAL SUB COURT,ERNAKULAM

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PETITIONER:

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1. SREI INTERNATIONAL FINANCE LTD.,(CO. PRESENTLY RENAMED AS SREI INFRASTRUCTURE FINANCE LTD.)HAVING ITS REGD.OFFICE AT `VISWAKARMA', 86C, TOPSIA ROAD (SOUTH), CALCUTTA-700 046, STATE OF WEST BENGAL, REP. BY ITS MANAGING DIRECTOR.

2. THE REGIONAL MANAGER, SREI INTERNATIONAL FINANCE LTD.,(COMPANY PRESENTLY RENAMED AS SREI INFRASTRUCTURE FINANCE LTD.)HAVING ITS REGIONAL OFFICE AT `MAHALAKSHMI', (1ST FLOOR) NEW NO.290, (OLD NO.151), PETERS ROAD, GOPALAPURAM, CHENNAI, STATE OF TAMIL NADU.

3. THE BR.MANAGER, SREI INTRNL.FINANCE LTD. HAVING ITS OFFICE AT 40/9010,3RD FLOOR,S.B.CENTRE, NEDUMCHALIL CHAMBERS,EKM-682011. ALL THE 3 PTNRS. ARE REP.BY SRI.S.N.VISHU,S/O.K.G.NATARAJAN,BRANCH MANAGER,SREI INFRASTRUCTURE FINANCE LTD.EKM,BY VIRTUE OF P/A.EXECUTED BY M/S.SREI INFRASTRUCTURE

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENTS:

NARAYANAN EMBRAN, PROPRIETOR, KAIRALI GRANITES, N.H.BYE PASS, MARADU P.O., KOCHI-682 304.

BY ADV. SRI.BEPIN VIJAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF PLAINT (O.S NO: 448/2004) FILED BY THE RESPONDENT BEFORE THE SUB COURT, ERNAKULAM

EXT.P2: -DO- OF WRITTEN STATEMENT FILED BY THE DEFENDANTS IN O.S.NO: 448/2004 DT.13.12.2004

EXT.P3: -DO- OF ADDITIONAL WRITTEN STATEMENT FILED BY THE DEFENDANTS IN O.S.NO: 448/2004 DT. 22.2.2006

EXT.P4: -DO- OF I.A.NO: 1189/2006 FILED BY THE DEFENDANTS IN O.S. NO:448/2004

EXT.P5: TRUE COPY OF HIRE PURCHASE AGREEMENT ENTERED INTO BETWEEN THE PETITIONERS AND THE RESPONDENT DT.1.10.2000

EXT.P6: -DO- OF ORDER DT.30.6.2006 IN I.A.NO:1189/2006 IN O.S.NO: 448/2006 ON THE FILE OF THE SUB COURT, ERNAKULAM

jj /TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

WP(C)No.22994 OF 2006 K

Dated this the 23rd May, 2007.

JUDGMENT

Respondent takes notice through counsel.

2. This writ petition is filed seeking a direction to quash the order passed in O.S.448/2004. The writ petitioners moved an application, I.A.1189/2006 for receiving additional written statement. But the plea which they want to incorporate by way of additional written statement is with regard to an arbitration clause which may affect the jurisdiction of the Civil Court itself. Section 8 of the Arbitration and Conciliation Act, 1996 makes it very clear that the question of arbitration agreement has to be raised by the party not later than when submitting his first statement on the substance of the dispute. So, the competency of the Court to consider the question of arbitration and referring the parties to the arbitration would arise only if such a contention is raised at least while submitting his first statement. In this case I am informed that first written statement was filed, issues were raised, the parties have gone for trial and the evidence is already adduced and at this stage an attempt is made to incorporate the plea of arbitration which is clearly against the provisions of Section 8(1) of the

Arbitration and Conciliation Act. The learned Subordinate Judge had considered that point and had rejected the request and it does not suffer from any illegality or infirmity and therefore the writ petition lacks merit and is dismissed.

The parties are directed to appear before the Court below on 12.6.2007.

M.N.KRISHNAN
Judge

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